

**Brewery Workers Union No. 9, DALU-AFL-CIO
and Pabst Brewing Company and Local Union
No. 113, Laborers International Union of North
America, AFL-CIO. Case 30-CD-104**

July 30, 1982

**DECISION AND DETERMINATION OF
DISPUTE**

**BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER**

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Pabst Brewing Company, herein called the Employer, alleging that Brewery Workers Union No. 9, DALU-AFL-CIO, herein called the Brewery Workers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees it represents rather than to employees represented by Local Union No. 113, Laborers International Union of North America, AFL-CIO, herein called the Laborers.

Pursuant to notice, a hearing was held before Hearing Officer Rocky L. Coe on March 15, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Brewery Workers, the Laborers, and the Employer filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

Pabst Brewing Company is a Delaware corporation engaged in brewing beer at its facilities located in Milwaukee, Wisconsin. During the past calendar year, a representative period, the Employer received gross revenues in excess of \$500,000 in the course and conduct of its business and, during the same period of time, it sold and shipped goods and materials valued in excess of \$50,000 directly to points located outside the State of Wisconsin. The parties stipulated that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein. Ac-

cordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Brewery Workers and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. The Work in Dispute

The work in dispute, which was stipulated to by the parties, involves the loading, unloading, handling, and shipping of advertising materials at the Employer's Delta warehouse.

B. Background and Facts

The Employer purchased Blatz brewery in 1959, a purchase which included Blatz' complex known as the East Side Plant. At that time, both the Brewery Workers and the Laborers had collective-bargaining agreements with Blatz and both Unions continued to represent employees at the East Side Plant. Between 1959 and 1982, the Employer stored its advertising or merchandising materials, which consist of promotional supplies such as signs, coasters, napkins, clocks, and beer glasses, at a warehouse at the East Side Plant. As more fully set forth below, the work of handling these materials was divided between employees represented by the Brewery Workers and the Laborers pursuant to an understanding reached in December 1961.

Between 1959 and 1981, the Employer operated out of several outside leased warehouses in addition to the facilities located at the East Side Plant.¹ The Employer also owns a facility known as the Delta warehouse which, prior to 1970, had been leased by it to other entities and was not used for its own business. From 1970 until 1981, the Employer utilized the Delta warehouse to store brewery materials.

Sometime in 1981, the Employer decided that it would be more efficient and economical to consolidate the receiving, shipping, and storing of brewery materials, supplies, and advertising or merchandising materials at the Delta warehouse. To that end, the warehouse was renovated at a cost of approximately \$2.6 million.

In contrast to the mixed jurisdiction at the East Side Plant, the handling of materials at the Delta

¹ The record refers to at least two such facilities: the Globe Union building on North Hopkins and the International Harvester building on 16th Street in Milwaukee.

warehouse had always been done exclusively by employees represented by the Brewery Workers and the Employer determined that the advertising materials formerly stored at the East Side Plant should be handled by these employees, at least some of whom were transferred to the Delta warehouse from the East Side Plant.² It is the assignment of this work when the consolidation was effected in late 1981 that gave rise to this proceeding.

C. The Contentions of the Parties

The Brewery Workers and the Employer contend that the Employer's assignment of the work in dispute to employees represented by the Brewery Workers is consistent with the terms of the collective-bargaining agreements, and is supported by the Employer's preference, the Employer and area practice, and the efficiency and economy of the Employer's operation of the Delta warehouse.

The Laborers argues that the work in dispute has traditionally been performed by employees represented by it and that the collective-bargaining agreements favor continuation of Laborers' performance of the work. The Laborers further contends that two employees represented by it were laid off as a direct result of the Employer's assignment of the work to employees represented by the Brewery Workers and, thus, the factor of job impact supports assignment of the work to employees represented by the Laborers.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that there is no agreed-upon method for the voluntary settlement of the dispute.³ The parties have stipulated, and we find, that on or about February 18, 1982, the Brewery Workers threatened the Employer that it would, if necessary, engage in a strike if the work in dispute should be assigned to employees represented by the Laborers. Accordingly, we find that a jurisdictional dispute exists in this case and that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated.⁴

² As a result of the consolidation, approximately 17 members of the Brewery Workers and 2 members of the Laborers were laid off.

³ *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [Columbia Broadcasting System], 364 U.S. 573 (1961).

⁴ We also note that it is irrelevant that the party making the threat is the one presently performing the disputed work. See, e.g., *International Union of Operating Engineers, Local 542, AFL-CIO (C. J. Langensfelder and Son, Inc.)*, 241 NLRB 562 (1979).

Furthermore, the parties stipulated, and we find, that there exists no agreed-upon method for the voluntary settlement of the dispute. Accordingly, we find that this dispute is properly before the Board for determination under Section 10(k) of the Act.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors. The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.⁵

The following factors are relevant in making the determination of the dispute before us:

1. Agreements

Both the Brewery Workers and the Laborers have collective-bargaining agreements with the Employer. The agreement with the Brewery Workers provides, *inter alia*, that the "storage, handling and transporting of brewery materials, bottles, kegs and cases . . . whether at the brewery or at Employer-owned, leased or operated warehouses in Milwaukee County and environs, comes within the coverage of this agreement."⁶ The agreement further provides that:

6. The loading or unloading of advertising materials at the brewery, or at Employer-owned, leased or operated warehouses in Milwaukee County and environs, or at railroad sidings, shall be performed by members of the Union, provided however that such jurisdiction does not conflict with jurisdiction over such work which is performed by members of another Union recognized by the Employer.⁷

The Employer's agreement with the Laborers provides in pertinent part that "work which is or has been exclusively performed by members of the Union will not be assigned to employees of any other bargaining unit of the Employer."

The Employer also introduced into evidence a letter dated December 26, 1961, which confirms an understanding reached at an earlier meeting concerning jurisdiction over the loading and unloading of advertising materials. The letter states that the Brewery Workers would have jurisdiction over the loading of such materials for all beer wholesaler and company-owned trucks and unloading of all

⁵ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

⁶ Art. XVI, sec. 4.

⁷ *Id.*, sec. 6.

company-owned trucks. The letter further states that the Laborers would have jurisdiction over the loading of "cartage company" trucks for both interplant shipments and intraplant shipments at the East Side Plant and unloading of all trucks except company-owned vehicles.

From the foregoing it is clear that both the Brewery Workers and the Laborers have a colorable claim to at least part of the work in dispute. Accordingly, we find that these agreements favor neither party to the dispute.⁸

2. Employer's past assignments

The record indicates that, in the past, the location has in large measure determined the Employer's assignment of work. As previously noted, the work in dispute, when performed at the East Side Plant, was divided between employees represented by the Brewery Workers and the Laborers. However, the record shows that the work of handling materials in general at the Employer's other warehouses⁹ has been performed exclusively by members of the Brewery Workers. Industrial Relations Manager Gary L. Lewitzke testified that members of the Laborers "handled all of the movement on the east side of the river" (the East Side Plant complex) and members of the Brewery Workers performed all of the material handling at all of the Employer's other facilities, including the Delta warehouse. In this regard, the record further indicates that other work was assigned on the basis of location. Thus, although members of the Brewery Workers performed snow removal functions and handled office supplies at the W. Juneau facility, the same functions at the East Side Plant were performed by members of the Laborers.

In light of the past practice of certain work assignments being determined by location, the fact that members of the Brewery Workers have in the past performed all handling work at the Delta facility favors assignment of the work in dispute to them.

3. Area practice

The uncontradicted testimony of several witnesses indicates that at Miller Brewing, the only other brewery presently operating in Milwaukee, the work of handling advertising materials is performed by employees represented by the Brewery Workers, although Miller has employees who are represented by the Laborers. No other evidence

⁸ These included the W. Juneau property, the 16th Street facility (International Harvester), and the North Hopkins warehouse (Globe Union) in addition to the Delta facility.

⁹ See *International Union of Operating Engineers, Local 542, AFL-CIO (C. J. Langenfelder and Son, Inc.)*, *supra*.

was offered with respect to area or industry practice.

From the foregoing, we conclude that the area practice also favors assignment of the work in dispute to employees represented by the Brewery Workers.

4. Employer preference

The Employer stated that it prefers that the assignment of the work in dispute be made to employees represented by the Brewery Workers. Thus, the factor of Employer preference favors assignment of this work to employees represented by the Brewery Workers.

5. Employee skills

The record shows that the work in dispute involves no special skills and that both groups of employees could perform it with equal efficiency. Accordingly, this factor does not aid us in determining this dispute.

6. Economy and efficiency of operations

As noted above, the Employer has consolidated its warehouse operations at the Delta facility. Until the present dispute arose, members of the Brewery Workers handled all materials at the Delta warehouse. There was uncontradicted testimony that the work in dispute is sporadic and would be part-time employment and that, should members of the Laborers be assigned to perform that part of the handling of advertising materials previously performed, the Employer would have required a laborer to be sent over to the warehouse each time that advertising materials were handled. There was further evidence that, since the Delta warehouse is several miles from the East Side Plant, such action would cause delays and possible demurrage charges.

From the foregoing, it is clear that the factor of economy and efficiency of operations supports assignment of the work in dispute to employees represented by the Brewery Workers.

7. Job impact

The Laborers asserts that two employees represented by it were laid off as a direct result of the transfer of advertising materials to the Delta facility and the Employer's assignment of the work in dispute to employees represented by the Brewery Workers. However, the record reveals that a number of members of the Brewery Workers were also laid off as a result of the consolidation of the Employer's warehousing operations and the Laborers offered no specific evidence to support its

claim, other than the conclusionary statement that the two layoffs were a "direct result" of the assignment to members of the Brewery Workers. In addition, we note that the members of the Laborers who handled advertising materials at the East Side Plant also performed a number of other job functions. Thus, it appears that the layoffs were caused in some measure by an overall decrease in work at the East Side Plant resulting from the consolidation of all warehouse functions at the Delta warehouse.

Finally, the fact that no evidence was offered to contradict testimony that the handling of advertising materials at the Delta warehouse would be a part-time job belies the assertion that two full-time employees were laid off as a direct result of the assignment of the work in dispute to members of the Brewery Workers. Accordingly, this factor does not support assignment of this work to employees represented by the Laborers.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that the Employer's employees represented

by the Brewery Workers are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's preference, past assignments, area practice, and the economy and efficiency of operations, all of which favor awarding the disputed work to the employees represented by the Brewery Workers. In making this determination, we are assigning the work to employees represented by the Brewery Workers, and not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees employed by Pabst Brewing Company who are represented by Brewery Workers Union No. 9, DALU-AFL-CIO, are entitled to perform the work of handling advertising materials at the Employer's Delta warehouse operation.